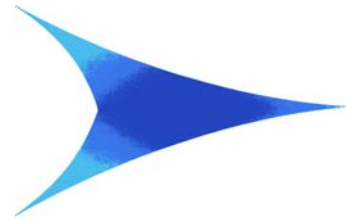


The Southern Cross Group

Promoting Mobility in the Global Community
www.southern-cross-group.org



Submission to the Australian
Department of Family and Community Services,
International Branch

Social Security Agreement Between Australia and the United States of America

Canberra

31 January 2002

The Southern Cross Group is an international non-profit advocacy organisation seeking to speak for and work with the million-odd members of the Australian Diaspora world-wide.

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This submission is in response to the Department's invitation of 30 November 2001 to offer views on the proposed Agreement between Australia and the United States of America on Social Security.

Following receipt of the Department's letter, the Southern Cross Group (SCG) circulated an e-bulletin to its some 1,000 members world-wide inviting input, and at the same time made the text of the Agreement itself, along with the Department's explanation of the Agreement, available on its website. In addition, the Department's documentation was circulated at the Australian New Zealand American Chambers of Commerce Conference in Washington DC on 1 December 2001, and by e-mail to the Committees of all Chambers around the United States afterwards.

In total the Southern Cross Group received e-mail comments from six people. In addition, several further individuals requested basic information about the Agreement, and their queries were answered by providing them with the documentation which the Department had already made available.

The proposed Agreement is welcomed by the Southern Cross Group and its members. Based on statistics for the year 2000 provided by the Department of Foreign Affairs and Trade (DFAT), we understand that there are presently more than 100,000 Australian citizens living in the United States. Taken with Australia's population of around 50,000 US-born residents, it is clear that as many people reach retirement age, the Agreement will, as time goes on, positively impact ever greater numbers of individuals. Although the Agreement not only applies to age pensions but some other benefits, we believe that this will be its greatest contribution.

The Group strongly supports the ratification of the proposed Agreement by the US Congress and the Australian Parliament at the earliest opportunity. At this time, however, the SCG would like to bring to the Department's attention several matters of concern which, although not within the scope of the proposed Agreement or encompassed in Australia's network of bilateral social security arrangements, nonetheless warrant further consideration. These matters concern difficulties for self-funded retirees. As it is in the interests of any government to limit the pool of individuals who will require government age pensions in retirement, we hope that these issues can be given further thought by both the Department of Family and Community Services and other relevant Government agencies.

Roll-over Limitations on Australian Superannuation and US 401K Schemes

Many Australians currently in the United States will be self-funded retirees, whether they chose to spend their retirement in Australia or in the US. Many enjoy incomes of a level that they will not ever need to draw an Australian

assets-based age pension. The same is probably true of many US-born Australian residents, although the Southern Cross Group has had no contacts with this group in the Australian community.

It has been drawn to our attention that it is currently not possible to roll over an Australian superannuation amount (employer, pretax contributions) to a US 401K plan. In the United States, in the absence of superannuation as understood in Australia, the 401K scheme is the primary retirement savings vehicle for most people.

For example, an Australian citizen or resident who has superannuation in Australia, then moves to the US, must leave his or her superannuation intact in Australia, or risk hefty early withdrawal penalties. They then have the option of contributing to a new 401K scheme or similar plan under US law. This leads to an individual having retirement monies in two separate countries. Consolidating the savings in one investment account would often result in greater long term growth. It would also mean that an individual could have their entire retirement savings in the country in which they are resident at retirement, making administration easier and cheaper.

An individual who has contributed to a US 401K scheme while working in the United States cannot take this money out of the 401K scheme before he or she reaches their 60s, unless they are prepared to pay a heavy tax penalty. In 2001 the maximum tax-free amount which could be contributed by an individual to a US 401K scheme under US Internal Revenue Service law was US\$10,500 p.a., and many people not only contribute this maximum pre-tax amount to achieve the greatest tax saving, but also contribute additional after-tax income to their scheme. So an Australian who has worked in the United States for even just one or two years will have a sizable investment in the US.

It is submitted that it would be in the interests of both the United States and Australia to negotiate arrangements whereby an individual's savings in an Australian superannuation scheme could be rolled over into a recognised US 401K or equivalent scheme and vice versa, without that individual suffering early withdrawal penalties.

Additional Tax Issues

An added complication arises with regard to Australian taxes on US 401K schemes. If an individual is resident and working in Australia, they will be taxed on their world-wide income. The SCG has been advised that interest, dividends and probably some increases in some types of mutual funds as well as employer supplement contributions to a US 401K scheme in a given year would then be taxable for such an individual in Australia.

However, since these funds are locked in a sheltered account in the United States, the tax payer in Australia does not have effective access to the funds in those accounts so that it could be used to pay the tax. Although one would receive a foreign tax credit for Australian taxes paid on such deemed income, since US taxes on the sheltered investment would be paid far into the future when the money is drawn in retirement, or never, there is nothing usually to credit the Australian tax against. Foreign tax credit carry forwards are limited in time under US tax law.

As increased numbers of individuals go between Australia and the United States for employment purposes, this is a growing problem. It can effectively result in double taxation, where, as is usually the case, the credit for Australian tax paid cannot be used in the US because of the time lag mentioned above.

Some large corporations “tax protect” their expatriates by compensating employees sent abroad if they end up paying more tax due to their residence abroad than they would otherwise pay. However, the majority of people, who do not work for such companies, are left in an adverse position. If Australia and the United States do conclude a free trade agreement, this problem can be expected to increase as the flow of personnel between the countries increases.

Temporary Absences for Trustees of Australian Superannuation Funds

Finally, the SCG has received information from one Australian citizen in the United States who maintains her own superannuation fund in Australia, having had a history of self-employment. She was recently told by her accountant that new legislation has been proposed in Australia concerning superannuation fund trustees. This legislation would allow trustees of Australian superannuation funds a maximum two year temporary absence from Australia before making their superannuation fund a non-complying fund.

The woman concerned has already been away from Australia for two years, and may therefore need to appoint another director to her trustee company of which she is currently the sole director. On the other hand, she would be reluctant to put herself at risk by having another trustee over whom she has no ability to exercise close supervision from afar.

While the Southern Cross Group has not had an opportunity to look into this issue in any detail at this stage, if such legislation is in the pipeline, it is clearly a matter of concern for Australians overseas, and would affect the ability of globally mobile individuals to self-fund their retirement effectively and to the greatest extent possible.